

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

GARY WILLIAMS BLACK, #766492,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:05-CV-1578-L
	§	
BILL HILL, et al.,	§	
	§	
Defendants.	§	

**MEMORANDUM OPINION AND ORDER**

This is a *pro se* civil rights action brought by inmate Plaintiff Gary Williams Black (“Plaintiff”), who has been granted leave to proceed *in forma pauperis*. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, the case was referred to United States Magistrate Judge Wm. F. Sanderson, Jr., for review and submission of proposed findings of fact and recommendation for disposition. On December 12, 2005, the Findings, Conclusions and Recommendations of the United States Magistrate Judge (the “Report”) were filed, to which Plaintiff filed objections.

After an independent review of the pleadings, file, record, applicable law, the magistrate judge’s findings and conclusions, and consideration of Plaintiff’s Objections, the court determines that the findings and conclusions of the magistrate judge are correct, and hereby **accepts** them as those of the court.

**I. Discussion**

In this civil rights action brought pursuant to 42 U.S.C. § 1983, Plaintiff alleges that he was unlawfully indicted and convicted for child endangerment in Dallas County Cause No. F05-35160.

He seeks monetary, declaratory and injunctive relief, as well as release from prison. The magistrate judge, after screening the case under 28 U.S.C. § 1915A, recommended that the court dismiss Plaintiff's complaint without prejudice as frivolous pursuant to 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B). Specifically, the magistrate judge found that Plaintiff had failed to satisfy the requirements of *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), a prerequisite to bringing a suit under § 1983 that implicates the validity of Plaintiff's conviction. *See* Report at 3 (citing *Heck*, 512 U.S. at 487) ("The *Heck* court unequivocally held that unless an authorized tribunal or executive body has overturned or otherwise invalidated the plaintiff's confinement, his claim is not cognizable under [section] 1983."). As Plaintiff failed to satisfy any of the *Heck* conditions, the magistrate judge found that, under applicable law, Plaintiff's § 1983 complaint seeking monetary, declaratory and injunctive relief should be dismissed without prejudice. *See id.* at 4 (and cases cited therein). With regard to his request for release from prison, the magistrate judge found that such a request is only cognizable in a habeas corpus action filed pursuant to 28 U.S.C. § 2241. *See id.* at 2 n.1.

Plaintiff has filed objections which the court has reviewed. Plaintiff's objections are nothing more than a recitation of the requirements of the United States Constitution and the Bill of Rights, in particular. He requests that the court consider the constitutional rights to equal protection and due process. Further, he reminds the court of the need to construe liberally the pleadings of a *pro se* plaintiff. He does not assert that he has met any of the *Heck* requirements.

The court **overrules** Plaintiff's objections. As the magistrate judge correctly found, Plaintiff has failed to satisfy the *Heck* requirements. Accordingly, his § 1983 complaint should be dismissed

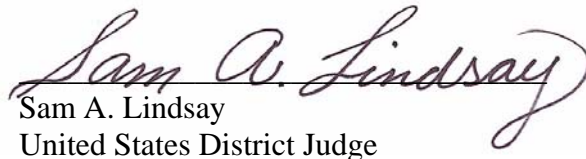
without prejudice to it being reasserted should the *Heck* requirements be met. *See Heck*, 512 U.S. at 487.

## **II. Conclusion**

For the reasons herein stated, the court **overrules** Plaintiff's Objections to the Findings, Conclusions and Recommendations of the United States Magistrate Judge. The court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **dismisses without prejudice** Plaintiff's § 1983 complaint as frivolous.

A final judgment dismissing this case in accordance with the foregoing will issue by separate document.

**It is so ordered** this 28<sup>th</sup> day of February, 2006.

  
Sam A. Lindsay  
United States District Judge